

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Rio Tinto plc,

Plaintiff,

v.

Vale S.A., Benjamin Steinmetz, BSG
Resources Limited, VBG-Vale BSGR Limited
aka BSG Resources (Guinea) Ltd. aka
BSG Resources Guinée Ltd, BSG Resources
Guinée SARL aka BSG Resources (Guinea)
SARL aka VBG-Vale BSGR, Frederic Cilins,
Mamadie Touré, and Mahmoud Thiam,

Defendants.

Civil Action No. 14-cv-3042 (RMB)

**AFFIDAVIT IN SUPPORT OF ENTRY OF
DEFAULT AGAINST
DEFENDANT FREDERIC CILINS**

Keith H. Forst, being duly sworn, deposes and says:

1. I am a member of the New York State Bar, admitted *pro hac vice* to this Court, and associated with Quinn Emanuel Urquhart & Sullivan, LLP, attorneys for Plaintiff Rio Tinto plc (“Rio Tinto”) in the above-entitled action. I am familiar with the facts and circumstances in this action.

2. I submit this affidavit pursuant to Rule 55.1 of the Civil Rules for the Southern District of New York and in support of Rio Tinto’s request for the entry of default against Defendant Frederic Cilins.

3. Upon information and belief, Defendant Cilins is not a minor (specifically, on information and belief, he is 52 years of age). Nor is Defendant Cilins mentally incompetent or in the military service of the United States.

4. This is an action to recover monetary damages owed by Defendant Cilins to Rio Tinto for the theft of its valuable mining rights in the Simandou region of southeast Guinea. *See*

14-cv-03042-RMB (S.D.N.Y.), Dkt. 83, at 1. Defendant Cilins played a central role in that theft, *id.* at 1-4, 7, 16, 17, 36-41, and those actions constitute violations of the Racketeer Influence and Corrupt Organizations Act (“RICO”) *id.* at 44-57, conspiracy to violate RICO, *id.* at 58-59, fraud, *id.* at 59-61, conspiracy to commit civil fraud, *id.* at 61-62, and aiding and abetting a fraud, *id.* at 62-63.

5. This Court has subject matter jurisdiction over Rio Tinto’s claims under 28 U.S.C. § 1331 and 18 U.S.C. §§ 1964 and 1965.

6. This Court also has supplemental jurisdiction over Plaintiff Rio Tinto’s state law claims pursuant to 28 U.S.C. § 1367.

7. Exercise of personal jurisdiction over Defendant Cilins is reasonable and proper on one or more grounds. First, this Court has jurisdiction over Defendant Cilins because he was properly served while located in this district. Second, 18 U.S.C. § 1965(a) similarly conveys jurisdiction over Defendant Cilins because he was found and served while located in New York. Third, 18 U.S.C. §1965(b) conveys personal jurisdiction over Defendant Cilins based on the acts of his co-conspirators and agents within the state. Additionally, 18 U.S.C. §1965(b) conveys proper jurisdiction because, on information and belief, there is no district in which all Defendants can otherwise be tried together. Fourth, Federal Rule of Civil Procedure 4(k)(2) conveys jurisdiction over Defendant Cilins because the claims against Defendant Cilins arise under federal law, he has been served with a summons and complaint in this action, and exercising jurisdiction over him would comport with traditional notions of fair play and justice. Fifth, NY CPLR § 302(a)(2) and (a)(3) convey jurisdiction over Defendant Cilins because he committed tortious acts within and without the state that caused injury within the state, specifically by engaging in acts that deprived Rio Tinto of its Simandou mining concession, covering up those

acts, and obstructing an investigation by the U.S. Attorney's Office of the Southern District of New York into that wrongful conduct.

8. Rio Tinto initiated this action on April 30, 2014 by filing the Summonses and Complaint. *See* 14-cv-03042-RMB (S.D.N.Y.), Dkt. 2. Rio Tinto served a copy of the Summons and Complaint on Defendant Cilins on May 29, 2014 through personal service, by personal delivery, at the Metropolitan Detention Center of Brooklyn, 80 29th Street in the borough of Brooklyn, Kings County, New York, where Defendant Cilins was then incarcerated. Proof of service was filed in this Court. *See* 14-cv-03042-RMB (S.D.N.Y.), Dkt. 37. Defendant Cilins never answered the Complaint.

9. On August 15, 2014, Rio Tinto filed an Amended Complaint. *See* 14-cv-03042-RMB (S.D.N.Y.), Dkt. 83. Rio Tinto served Defendant Cilins with a copy of the Amended Complaint on September 17, 2014 through personal service, by personal delivery, at Moshannon Valley Detention Center, 555 Geo Drive, Philipsburg, PA 16866, where Defendant Cilins remains incarcerated. 14-cv-03042-RMB (S.D.N.Y.), Dkt. 90. Pursuant to Fed. R. Civ. P. 12(a)(1)(A)(i), Defendant Cilins had until October 8, 2014, to answer the Amended Complaint. To date, Defendant Cilins has not answered.

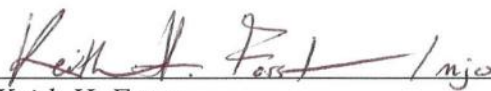
10. Rio Tinto additionally contacted Defendant Cilins by letter on October 22, 2014 to request that he answer the Amended Complaint and to further notify him that his failure to do so could subject him to a default judgment. Rio Tinto never received a response from Defendant Cilins. Rio Tinto again contacted Defendant Cilins by letter on December 23, 2014, per certified mail, to notify him that Rio Tinto would be seeking an entry of default against him. Defendant Cilins received that letter on December 26, 2014 at Moshannon Valley Detention Center, 555 Geo Drive, Philipsburg, PA 16866. Defendant Cilins has not written back.

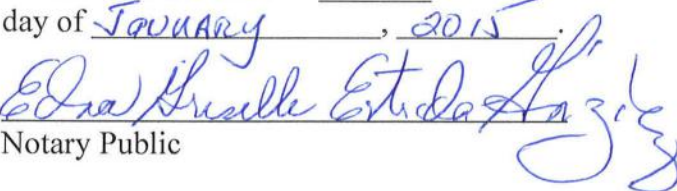
11. Pursuant to Your Honor's Default Judgment Procedure, Rio Tinto will be submitting a proposed Order to Show Cause and Memorandum in Support of an Order to Show Cause at the appropriate time and after it receives a Certificate from the Orders and Judgments Clerk that is being filed concurrently herewith, pursuant to L.R. 55.2(b). To be clear, Rio Tinto is only seeking an entry of default against Defendant Cilins (not other defendants) for his failure to answer or otherwise appear in this action.

WHEREFORE, Rio Tinto respectfully requests the entry of default against Defendant Cilins.

Dated: Washington, D.C.

January 6, 2015


Keith H. Forst

Sworn to before me this 6th
day of JANUARY, 2015.

Notary Public

EDNA GRISELLE ESTRADA-GONZÁLEZ
Notary Public, District of Columbia
My Commission Expires April 14, 2018

